

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA**

**v.**

**BRANDON MAYES**

**:  
:  
:  
:  
:**

**CRIMINAL ACTION**

**NO. 15-376-10**

**MEMORANDUM**

PRATTER, J.

DECEMBER 5, 2017

On February 3, 2017, counsel for Mr. Mayes filed a motion with the Court requesting a competency evaluation and hearing. Defense counsel expressed reservations about his client's mental ability to meet the minimum standards of competency for a trial. Since that time, Mr. Mayes has been the subject of intensive psychiatric examinations and put through a battery of tests. He was committed to a hospital for observations for multiple weeks, and was observed by many neuropsychologists who then issued various reports. The Court has reviewed all of this information and seen Mr. Mayes in person over the last two years while observing his interactions with counsel and the Court.

The Court finds Mr. Mayes competent at this time to stand trial or enter into plea negotiations, and if so determined at the time of the plea, enter a plea. Such a finding is subject to certain accommodations. The Court will provide Mr. Mayes with a written, real-time transcript of the proceedings, repetition of key information if necessary, and extra breaks in the proceedings to ensure he has ample opportunity to communicate with counsel and understand the events of a trial or plea hearing. While these actions may substantially increase the length of a trial or hearing, the Court finds them necessary to ensure that Mr. Mayes can adequately assist counsel in his defense. The Court expresses no view on how this may influence or affect the co-defendants in the case. The Court merely finds that these accommodations are necessary for Mr. Mayes to adequately understand the proceedings and assist counsel in his defense.

## **BACKGROUND**

### **I. Legal Standard**

The test of competence is whether a defendant “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402 (1960). “Requiring that a criminal defendant be competent has a modest aim: It seeks to ensure that he has the capacity to understand the proceedings and to assist counsel.” *Godinez v. Moran*, 509 U.S. 389, 401 (1993). Congress codified the determination of a defendant’s competence to stand trial in the Comprehensive Crime Control Act of 1984. *See* 18 U.S.C. § 4241. Congress defined a defendant as incompetent if “he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.” *Id.* There are “no fixed or immutable signs which invariably indicate” competency. *Drope v. Missouri*, 420 U.S. 162, 180 (1975). “The question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated.” *Id.*

### **II. Factual Background**

Mr. Mayes is a 34-year-old man with a 10th grade education. In 2006, he was the victim of a gunshot wound that injured his spine, resulting in paralysis of his lower extremities. He has been confined to a wheelchair since then. In 2011, he suffered a stroke that required doctors to perform an emergency hemicraniotomy, a procedure where doctors sawed open Mr. Mayes’s skull to expose his brain and relieve pressure. After the operation, Mr. Mayes suffered a number of complications, including respiratory failure, fever and pneumonia. His mental status declined, requiring him to be restrained and sedated with anti-psychotic and anti-seizure medicine. The stroke caused him to lose control of his right arm and hand as well as hearing in his right ear, while also narrowing his right-side visual field. He lost the ability to speak or understand speech.

Over time, Mr. Mayes regained ability to speak and understand others, but his cognitive function remains limited.

He is charged with a conspiracy that began three years after his gunshot wound, and lasted through June of 2012. In January 2017, defense counsel obtained a report from Dr. Barbara Malamut, a neuropsychiatrist who evaluated Mr. Mayes. Dr. Malamut concluded that Mr. Mayes could not understand the details of a plea agreement. Pointing to this evaluation, defense counsel requested that the Court evaluate Mr. Mayes's competency and the Government requested the defendant be committed for a competency evaluation. In response, the Court ordered a competency evaluation of Mr. Mayes and committed him to Federal Medical Center Devens to evaluate his competency to stand trial. He was examined by four different medical professionals who variously disagreed about Mr. Mayes's level of comprehension.

#### **DISCUSSION**

While initial assessments of Mr. Mayes were either equivocal or pointed to his incompetency, the most recent tests were the most comprehensive and concluded that Mr. Mayes is competent to stand trial. The Government retained University of Pennsylvania psychiatrist Susan Rushing and psychologist Megan Perrin to assess Mr. Mayes using a variety of tests, focusing on his ability to understand the case and recall information. These tests were helpful for the Court to "ensure that [Mr. Mayes] has the capacity to understand the proceedings and to assist counsel." *Godinez v. Moran*, 509 U.S. 389, 401 (1993).

Among other tests, Dr. Rushing administered the Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST\*MR), a 50-question assessment to determine Mr. Mayes's understanding of basic legal concepts, skills to assist in defense, and an understanding of his case. Mr. Mayes scored an overall score of 42 (84%). The average score associated with competent but intellectually disabled defendants is 37 (74%). His score was also well above the average of 25 (50%) associated with incompetent individuals.

Throughout his assessment, Mr. Mayes demonstrated an understanding of the charges against him. He stated that he knew he was charged with a felony, and when asked about the severity of the felony, reasoned that he received 30 months for an offense relating to a gun in the past, which serves as a data point for him now. He understood that there were multiple co-defendants on his indictment, hypothesized theories about how the police discovered the alleged drug cartel, and lamented his appointment of a federal defender instead of an independently retained lawyer.

Dr. Rushing also looked to Mr. Mayes's time in detention at Fort Devens, where several phone calls with his mother were recorded. In these phone calls, Mr. Mayes demonstrated a remarkable understanding of his case, much more so than the understanding he exhibited to the doctors who initially assessed him. For example, he asked his mother to contact his attorney to see if the charges would be dropped if he were found incompetent, or if they would persist against him. Mr. Mayes's questioning highlighted incongruity between his doctor's statements and what he understood as the law. Not only that, but the questions evinced an effort to determine the veracity of his doctor's assertions.

Mr. Mayes also speculated about how much longer he would be held for evaluation, weighing conflicting reports from his lawyer and doctor and assessing the validity of their time estimates. He identified nuance in the Court's order, correcting his mother when she claimed that "the judge said four months" of detention. Mr. Mayes, in asserting that he would be released earlier, responded "no, she said *up til*" four months. Such statements identify Mr. Mayes's ability to recall past actions, identify their salient features, and develop conclusions to help aid a coherent logical theory.

The Court has also personally observed Mr. Mayes over the course of the last two years since this indictment was filed. The Court see that Mr. Mayes has the capacity to understand the proceedings and assist his counsel in his defense. However, Mr. Mayes still requires some level

of assistance. Just as a blind person would need accommodations for physical evidence, or a non-English speaker would need an interpreter, Mr. Mayes needs certain accommodations. Therefore, during any future proceedings involving Mr. Mayes, he will receive a real-time transcript of what is being said in the case. For any complex legal terms or provisions, the Court will repeat them so Mr. Mayes understands the charges, and endeavor to explain them at a reading level commensurate with his comprehension.

Taking all of this into consideration, the Court finds Mr. Mayes is competent to stand trial. Nothing about an accommodation turns a competent person into an incompetent person, or vice versa. Here, the Court has concluded that Mr. Mayes can understand what is happening in court, but simply needs some assistance to do so. With the appropriate assistance, the Court finds that Mr. Mayes will be competent to stand trial.

#### **CONCLUSION**

For the foregoing reasons, the Court finds Mr. Mayes competent to stand trial. An appropriate order follows.

BY THE COURT:

/s/ Gene E.K. Pratter  
GENE E.K. PRATTER  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA**

**v.**

**BRANDON MAYES**

:  
:  
:  
:  
:

**CRIMINAL ACTION**

**NO. 15-376-10**

**ORDER**

**AND NOW**, this 5th day of December, 2017, upon consideration of the record in this case, the Court finds that, by a preponderance of the evidence, Mr. Mayes is competent. He is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense. Such a finding is subject to the accommodations in the memorandum opinion accompanying this order.

**BY THE COURT:**

/s/ Gene E.K. Pratter  
**GENE E.K. PRATTER**  
UNITED STATES DISTRICT JUDGE